IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4772 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAMJIBHAI K PANDOR - Petitioner(s)
Versus
DY EXECUTIVE ENGINEER & 3 - Respondent(s)

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Appearance :
MR JV JAPEE for Petitioner(s) : 1,
MS ARCHNA RAVA, ASST. GOVERNMENT PLEADER for Respondent(s) : 1 - 2.
NOTICE SERVED for Respondent(s) : 3 - 4.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 13/09/2006

ORAL JUDGMENT

1. By way of this petition under Article 226 of the Constitution of India, the petitioner has

challenged the legality and validity of the order passed by the respondent authorities dated 26th March, 1996 directing to recover Rs.800/- per month towards the rent w.e.f. 15th July, 1993 from the salary of the petitioner.

2. It is the contention on behalf of the petitioner that the impugned order dated 26th March, 1996 for the recovery of Rs.25,600/- being a rent paid to the petition for the period between 15th July, 1993 to 31st March, 1996 and to recover the said amount by monthly installment of Rs.800/- is ex-facie illegal and against the principles of natural justice as before passing the order dated 26th March, 1996, neither any opportunity was given nor any show-cause notice was issued upon the petitioner to show cause as to why the said amount should not be recovered from the petitioner. It is submitted by the petitioner that the nephew of the petitioner Shri Yogesh Jivabhai Pandor was residing with the petitioner and was doing some business and therefore, in one room the goods were kept. It is also

submitted by him that neither any deposit was accepted by the petitioner nor any rent was recovered from the said Yogesh Jivabhai Pandor and therefore, it is requested to allow the present Special Civil Application.

3. Ms. Archna Raval, learned AGP while supporting the order passed by the respondents dated 26th March, 1996 has submitted that in fact, the statement of the petitioner was recorded on 21st March, 1996 and considering the same, the impugned order came to be passed and therefore, it cannot be said that the impugned order dated 26th March, 1996 is in breach of principles of natural justice.

4. Ms. Archna Raval, learned AGP has taken this Court through the Rojkam/Statement of the petitioner dated 21st March, 1996, however, on going through the same, it cannot be said that there was any admission on the part of the petitioner with regard to accepting the rent from the said Yogesh Jivabhai Pandor. The

petitioner has specifically denied that any deposit and/or rent was accepted from said Yogesh Jivabhai Pandor. Ms. Archna Raval, learned AGP has submitted that in fact, the nephew cannot be considered to be the family member and therefore, he cannot stay with the petitioner. All these things are required to be considered and for which an appropriate opportunity is required to be given to the petitioner. Even before passing any order with regard to recovery of the rent paid for the period between 15th July, 1993 to 31st March, 1996 a show-cause notice was required to be issued upon the petitioner to show cause as to why the said amount should not be recovered from the petitioner. In absence of any such show-cause notice and/or opportunity if the impugned order is passed, the same is in breach of principles of natural justice and on this ground the present Special Civil Application is required to be allowed.

5. For the reasons stated above and considering the

fact that the impugned order dated 26th March, 1996 is in breach of principles of natural justice, the same is hereby quashed and set aside with a liberty that it will be open for the respondents to pass an appropriate order with regard to recovery in accordance with law and on merits after giving an opportunity to the petitioner.

6. Rule is made absolute to the aforesaid extent, however, there shall be no order as to costs.

[M.R.SHAH, J.]

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